side of the reservation.[13] On the other hand, the United States has a duty to protect its wards and, as incident to that duty, has certain rights against third parties. It may sue to enjoin interference with Indians' fishing rights;[14] to restrain the collection of taxes from Indians to whom lands have been allotted;[15] and to set aside contracts obtained by fraud from Indians who are citizens of a state.[16] In a recent case, the Supreme Court held that the United States could sue to cancel conveyances made by Indians contrary to the statute under which the lands had been allotted, and that the absence of pecuniary interest in the controversy was immaterial. *Heckman* v. *United States*, 32 Sup. Ct. 424.[17] Conversely, the United States by the various Depredation Acts has assumed the responsibility for injuries committed by its wards upon third persons.[18]

The Indian himself is not a citizen of the United States by birth since not born subject to the jurisdiction thereof.[19] Nor can he become a citizen under the general naturalization law because he does not comply with the color requirement.[20] The Dawes Act,[21] however, in conferring citizenship upon all Indians born within the United States to whom lands have been allotted or who live apart from tribes and have adopted the habits of civilized life, has widely extended this privilege. But even citizenship under this act does not remove the member of an Indian tribe from his position, as ward of the nation.[22]

RECENT CASES.

AGENCY — NATURE AND INCIDENTS OF RELATION — FATHER'S LIABILITY FOR TORTS OF SON. — The plaintiff was injured by the defendant's automobile, due to its negligent operation by the defendant's minor son. The son was using the car on a pleasure trip of his own without his father's knowledge but pursuant to a general permission to use it. *Held*, that the defendant is liable. *Stowe* v. *Morris*, 144 S. W. 52 (Ky.).

The court reasons that the son was the general agent of his father, because the machine was bought for the family pleasure and he was deriving pleasure from its operation. The act of driving the car plus the purpose for which it

---

[13] United States *v.* Holliday, 3 Wall. (U. S.) 407.

[14] United States *v.* Winans, 73 Fed. 72.

[15] United States *v.* Rickert, 188 U. S. 432, 23 Sup. Ct. 478.

[16] United States *v.* Boyd, 68 Fed. 577.

[17] The fact that the Indian grantors were not joined and that the United States was not suing as trustee of the legal title was held immaterial. *Cf.* United States *v.* Flournoy, etc. Co., 71 Fed. 576.

[18] The first act guaranteed eventual indemnification. 4 U. S. STAT. AT LARGE, 729, § 17. This was later repealed. 11 U. S. STAT. AT LARGE, 388, § 8. A later statute makes the United States liable when the Indian defendants are without funds and belong to a tribe in amity with the United States. 26 U. S. STAT. AT LARGE, 851, § 1. When the Indian offenders are unknown the United States is liable alone. United States *v.* Gorham, 165 U. S. 316, 17 Sup. Ct. 382.

[19] Elks *v.* Wilkins, 112 U. S. 94, 5 Sup. Ct. 41.

[20] *In re* Camille, 6 Fed. 256.

[21] 24 U. S. STAT. AT LARGE, 388, § 6.

[22] State *v.* Columbia George, 39 Or. 127, 65 Pac. 604.

was bought is thus made to determine the agency. The important question should be whether the son was using the machine for his own purposes. Though the father may derive some incidental benefit by his son's pleasure, it is an argument more fictitious than real to say that the son becomes his father's agent to supply himself with pleasure. It is a mere evasion of the rule that a parent is not liable for the torts of his child. *Kumba* v. *Gilham*, 103 Wis. 312, 79 N. W. 325; *Chastain* v. *Johns*, 120 Ga. 977, 48 S. E. 343. Where the son has a general permission to drive the family horse, the father has been held not liable. *Maddox* v. *Brown*, 71 Me. 432. And it has become well settled that an automobile is not *per se* a dangerous machine. *Daily* v. *Maxwell*, 152 Mo. App. 415, 133 S. W. 351; *Cunningham* v. *Castle*, 127 N. Y. App. Div. 580, 111 N. Y. Supp. 1057. On facts similar to those of the principal case the opposite result has been reached. *Doran* v. *Thomsen*, 76 N. J. L. 754, 71 Atl. 296; *Maher* v. *Benedict*, 123 N. Y. App. Div. 579, 108 N. Y. Supp. 228. *Contra*, *Daily* v. *Maxwell*, *supra*.

AGENCY — RATIFICATION OF UNAUTHORIZED CONTRACTS — CONTRACT OF INSURANCE RATIFIED AFTER OCCURRENCE OF LOSS. — A contract of insurance was made by an unauthorized agent on behalf of the plaintiff but the premium was not paid. *Held*, that ratification after loss is ineffectual. *Kline Bros. & Co.* v. *Royal Ins. Co.*, 192 Fed. 378 (Circ. Ct., S. D. N. Y.).

A shipowner insured himself as "carrier, or for account of whom it may concern" upon a cargo of goods and after a total loss collected the amount of the policy. The owner of the cargo sued him for the money remaining after his loss as carrier was covered. *Held*, that the suit is a ratification and the plaintiff may recover. *Symmers* v. *Carroll*, 134 N. Y. Supp. 170 (N. Y., App. Div.). See NOTES, p. 729.

AMBASSADORS AND CONSULS — RIGHT OF CONSUL TO BE APPOINTED ADMINISTRATOR OF FOREIGN DECEDENT'S ESTATE. — Under the most favored nation clause in a treaty, an Italian consul applied for letters of administration upon the estate of a deceased Italian. The treaty with the most favored nation provided that the consul might "intervene in the possession, administration, and judicial liquidation of the estate" of a deceased citizen of his nation "for the benefit of creditors and legal heirs." *Held*, that granting letters of administration to the public administrator is not error. *Rocca* v. *Thompson*, 32 Sup. Ct. 207.

The question here involved is important, inasmuch as at least two other treaties have a like provision. TREATY WITH SPAIN OF JULY 3, 1902, Art. XXVIII, 33 U. S. STAT. AT LARGE 2120; CONVENTION WITH GREECE OF DEC. 2, 1902, Art. XI, 33 U. S. STAT. AT LARGE 2129. This decision has settled the law on the point against the weight of authority in the state courts. *In re Wyman*, 191 Mass. 276, 77 N. E. 379; *Carpigiani* v. *Hall*, 55 So. 248 (Ala.); *Matter of Scutella*, 145 N. Y. App. Div. 156, 129 N. Y. Supp. 20. *Contra*, *Matter of Logiorato*, 34 N. Y. Misc. 31, 69 N. Y. Supp. 507. It is the duty of an American consul only to deliver up the effects of the deceased to his legal representative. U. S. REV. STAT., 1878, § 1709. Since every state has the control over the administration of estates within its territories, it would seem that the treaty should expressly state the fact, if this right is to be ceded. *Lanfear* v. *Ritchie*, 9 La. Ann. 96. See 5 MOORE, DIG. INT. LAW, 123. In other treaties it has been expressly stipulated. TREATY WITH PERU OF AUG. 31, 1887, Art. XXXIII, 25 U. S. STAT. AT LARGE, 1461. Moreover, the correspondence between the parties to the treaty with Italy shows that the consul was not meant to have the right of administration, since the Italian ambassador requested a change to that effect and was answered that such a change was impracticable on account of the large amount of territory covered by one